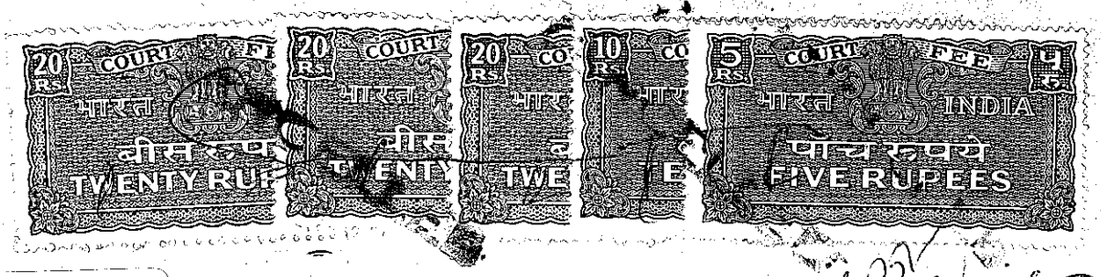

CF0000110135

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

MISC.PETITION No. 142 /1992.

Division Bench (Civil)

PETITIONERS :

1. ~~Pravin Kumar Gupta, Aged 33 yrs, S/o Shri Bipinkumar Gupta, Gupta Bhawan, Civil Lines, Nagpur Road, Chhindwara, M.P. (Pin Code No.480001)~~

Deleted as per Court order dated 9-11-92

2. Harisingh Dhakad, Aged about 26 yeers S/o Shri Ramcharan Dhakad, Krishi Upaj Mandi Samiti, Guna, District Guna,

Attested 30.11.92 Dy-Registrar DNO

3. Parmeshwar Prasad Jaiswal, Aged about 26 years, S/o Shri Sarjuprasad Jaiswal, Post Office Beltara, Via Pali, District Bilaspur, M.P.

Versus.

RESPONDENTS :

1. The State of Madhya Pradesh, through Secretary to Government, Agriculture Department, Bhopal.

2. The Director of Mandis, Sahkar Bhawan, Bhopal.

3. The Secretary, Krishi Upaj Mandi Samiti, Chhindwara, M.P.

4. The Secretary, Krishi Upaj Mandi Samiti, Bilaspur,

5. The Secretary, Krishi Upaj Mandi Samiti, Guna, M.P.

Filed on 11/11/93 by Shri Madan Singh Advocate. R.D.R. 4/11/93

COMMISSIONER OF JABALPUR Smt. SUMAN SOLANKI

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 142 of 1993

Petitioner : Hari Singh Dhakad

Vcrsus

Respondents : The State of Madhya Pradesh (now Chhattisgarh) & others

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Shri Akhilesh Dalpati, Advocate for the petitioner.

Shri Sushil Dubey, Govt. Advocate for the respondent No. 1.

None for the respondents No. 2 to 5.

O R D E R

(28th November, 2006)

1. Initially, this petition was filed on 11.1.1993 by three petitioners namely Pravin Kumar Gupta, Hari Singh Dhakad and Parmeshwar Prasad Jaiswal. Vide order dated 9.11.1998 the name of the petitioner No.1 Shri Pravin Kumar Gupta was permitted to be deleted.
2. At the very out set, learned counsel for the petitioner submits that the petitioner No.3 Shri Parmeshwar Prasad Jaiswal has already been regularized, thus his case has become infructuous. Thus, the petitioner No.3 does not want to press his case.
3. In view of the above, this order shall govern the case of the petitioner No.2 Hari Singh Dhakad, only.
4. The petitioner (Hari Singh Dhakad) was appointed as Sub Engineer on daily wage basis in the services of the respondent No. 5/Secretary, Krishi Upaj Mandi Samiti, Guna (M.P.) on 18.7.1988 (Annexure A), initially for a period of 89 days. Thereafter, his services was extended time to time but the petitioner was not considered for regularization

despite the fact that some other similarly situated daily wagers have been regularized.

5. The petitioner by this petition seeks regularization with effect from the initial appointment as daily wage worker with all consequential benefits.

6. It is admitted fact that the appointment of the petitioner was not in accordance with law and dehors the constitutional scheme. The appointment of the petitioner was not through the advertisement or by inviting applications through any other means from all eligible candidates. It is well settled principle of law that the daily wagers, temporary or ad hoc employees have no right to the post seeking regularization and grant of regular pay scale, if their appointments were dehors the constitutional scheme or the rules made under the proviso to Article 309 of the Constitution of India.

7. By order dated 15.1.1993 passed by the High Court the petitioner is continuing as daily wager.

8. The Constitutional bench of the Supreme Court in the case of **Secretary, State of Karnataka & others Vs. Umadevi (3) and others**[1], in para 44 has held as under:-

> *"44. ..... It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."*

6. In the case of ***Secretary, State of Karnataka and others*** *(Supra)* the Supreme Court has laid down clear enunciation of law which was

(72)

followed later on in various decisions by the Supreme Court. Some are ***Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others***[2], ***Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others***[3], ***Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others***[4] and ***U.P. State Road Transport Corporation vs. Man Singh***[5].

7. In the case of ***Secretary, State of Karnataka and others*** (Supra), the Supreme Court observed as under :-

> *"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."*
>
> *"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases*

(73)

concerned, in consultation with the Public Service Commission."

8. For the reasons above-stated and as per the dicta laid down by the Supreme Court, the petitioner is not entitled to permanent status or regularization in the service and consequential benefits.

9. This petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159

Thakur